

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ALAN OLSON**, on April 14, 2005 at
10:00 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Alan Olson, Chairman (R)
Rep. Dave Gallik, Vice Chairman (D)
Rep. Robyn Driscoll (D)
Rep. George G. Groesbeck (D)
Rep. Robin Hamilton (D)
Rep. Hal Jacobson (D)
Rep. Harry Klock (R)
Rep. Mark E. Noennig (R)
Rep. Wayne Stahl (R)
Rep. Brady Wiseman (D)

Members Excused: Rep. Dennis Himmelberger, Vice Chairman (R)
Rep. John Parker (D)
Rep. Diane Rice (R)
Rep. Karl Waitschies (R)

Members Absent: None.

Staff Present: Cynthia Peterson, Committee Secretary
Todd Everts, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:
Executive Action: SJ 31; SJ 44; HJ 45; SB 415

EXECUTIVE ACTION ON SJ 31

Motion/Vote: REP. JACOBSON moved that SJ 31 BE CONCURRED IN. Motion carried unanimously, with REP. HIMMELBERGER, REP. WAITCHIES, and REP. RICE voting aye by proxy. REP. OLSON will carry the resolution on the floor of the House.

EXECUTIVE ACTION ON HJ 44

Motion/Vote: REP. OLSON moved that HJ 44 DO PASS. Motion carried 12-2 with REP. STAHL voting no, and REP. WAITSCHIES voting no by proxy, and REP. HIMMELBERGER and RICE voting aye by proxy.

EXECUTIVE ACTION ON HJ 45

Motion: REP. DRISCOLL moved that HJ 45 DO PASS.

Discussion:

REP. GEORGE GROESBECK, HD 74, BUTTE, commented that the legislation was a good idea, and that he would support the bill.

Vote: Motion carried 13-1 with REP. WAITSCHIES voting no by proxy and REP. HIMMELBERGER and REP. RICE voting aye by proxy.

EXECUTIVE ACTION ON SB 415

Motion: REP. STAHL moved that SB 415 BE CONCURRED IN.

Motion: REP. STAHL moved that SB041510.ATE BE ADOPTED.
[EXHIBIT](#)(feh80a01)

Discussion:

REP. STAHL explained the amendment and stated he is still hopeful there may be a future for hydropower in Montana and thought the language in the bill was too restrictive.

REP. GROESBECK urged caution that if sideboards are not placed on water power, the language in the statute could be affected by future efforts to tax renewable resources at a different rate.

REP. DAVE GALLIK, HD 79, HELENA, stated striking the language would make hydro applicable to meeting the definition of "eligible renewable resource," and the bill would do absolutely nothing if the amendment were adopted. **REP. STAHL** disagreed and stated the only thing the amendment would affect is new hydropower installations. **REP. STAHL** thought the restrictive language relating to hydropower did not have to be in the bill.

REP. GALLIK referred to the language on Page 3, Line 4, and stated the language is applicable only to the electricity on a real-time basis from another state, as opposed to a facility located in Montana.

Todd Everts, Legislative Services Division, clarified the "either/or" language.

Vote: Motion failed 7-7 by roll call vote with **REP. KLOCK, REP. NOENNIG, REP. OLSON, REP. STAHL,** voting aye, and **REP. HIMMELBERGER, REP. RICE,** and **REP. WAITSCHIES** voting aye by proxy, and **REP. PARKER** voting no by proxy.

Motion: **REP. STAHL** moved that SB041511.ATE BE ADOPTED.
[EXHIBIT](#) (feh80a02)

Discussion:

REP. STAHL explained the amendment would strike "and verified by the commission" since there is no fiscal note. **REP. STAHL** explained the public utility would then be required to keep records, and the Public Service Commission (PSC) could access those records.

REP. GALLIK asked if the PSC was charged with enforcing and regulating and, therefore, should be able to track and verify. **REP. STAHL** replied the PSC would have the ability anyway, but should not be taking readings directly off the meters, and that should be left to the utilities. **REP. GALLIK** did not believe the bill required the PSC to read meters.

REP. BRADY WISEMAN, HD 65, BOZEMAN, commented it is in the utilities' interest to track and verify and that claims have to be verifiable by the commission.

Vote: Motion failed 2-12 by roll call vote with **REP. KLOCK** voting aye, and **REP. HIMMELBERGER** voting aye by proxy, and **REP. RICE** and **REP. WAITCHIES** voting no by proxy.

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*{Tape: 1; Side: A; Approx. Time Counter: 5 - 18.3; Comments:
Discussion on Stahl amendments SB041510.ate and SB041511.ate}*

Motion: REP. STAHL moved that SB041509.ate BE ADOPTED.
[EXHIBIT](#)(feh80a03)

Discussion:

REP. STAHL explained he would like to see penalties used for low-income assistance rather than go into the General Fund.

REP. GROESBECK agreed with the amendment and thought it was a good idea. REP. ROBYN DRISCOLL, HD 51, BILLINGS, agreed.

Vote: Motion carried unanimously, with REP. RICE, REP. HIMMELBERGER, and WAITCHIES voting aye by proxy.

Motion: REP. STAHL moved that SB041517.acb BE ADOPTED.
[EXHIBIT](#)(feh80a04)

Discussion:

REP. STAHL explained the new language is being inserted to assist co-ops who are looking at putting renewable resource energy into their portfolios.

REP. GALLIK wondered who would have enforcement capabilities if there was no private right of action and the co-ops are not regulated by the PSC. REP. STAHL believed the State could file action.

REP. WISEMAN wondered what sort of activity the amendment was trying to prevent. Mr. Everts explained the subsection (2) does not delineate what type of renewable resource, and that the language clarifies there is no legal cause of action for someone out there to try to enforce the provision of subsection (2).

REP. DRISCOLL asked if a co-op would have 5,000 or more customers. REP. STAHL added the amendment would give the co-ops protection from being sued because someone did not agree with the type of renewable resource they chose.

REP. GALLIK asked Mr. Everts to clarify whether the State would be able to force the legislative intent and require a co-op to have and implement a renewable energy standard. Mr. Everts responded under current law, the co-ops are not regulated by the PSC, but are regulated by their governing bodies. It was

uncertain whether there would be a cause of action against the utility by the State. **REP. NOENNIG** suggested there would be legislative oversight.

Vote: Motion failed 7-7 by roll call vote with **REP. KLOCK**, **REP. NOENNIG**, **REP. OLSON**, and **REP. STAHL** voting aye, and **REP. HIMMELBERGER**, **REP. RICE**, and **REP. WAITCHIES** voting aye by proxy.

Motion: **REP. STAHL** moved that SB041508.ATE BE ADOPTED.
EXHIBIT(feh80a05)

{Tape: 1; Side: B}

Discussion:

REP. STAHL explained the penalty would be changed from \$20 to \$5 per megawatt hour.

REP. DRISCOLL believed there should be an incentive to use renewable energy and pointed out with the adoption of the earlier amendment, the fines collected will go into low-income energy assistance.

CHAIRMAN OLSON was interested in knowing what would happen if the generator does not provide the energy and whether the utility could still be fined. **CHAIRMAN OLSON** pointed out there was nothing that would penalize the supplier. **REP. WISEMAN** believed that factor would have to be considered by whoever is doing the enforcement.

(**REP. GALLIK** leaves the hearing.)

REP. JACOBSON informed the Committee that Texas currently has a fine of \$50 per megawatt hour. **REP. STAHL** replied \$50 has driven the mandate in Texas to create more power, but believed the problem in Texas is very different than the problem in Montana. **REP. JACOBSON** thought \$20 might be a more reasonable penalty given Montana's situation.

Substitute Motion: Without objection, **REP. WISEMAN** moved that amendment SB041508.ate be changed to replace the proposed \$20 fine with a \$10 fine.

Discussion:

REP. GROESBECK thought the \$10 fine represents a good compromise.

Vote: Motion carried 13-1 by voice vote with **REP. DRISCOLL** voting no, and **REP. HIMMELBERGER**, **REP. RICE**, **REP. WAITCHIES** and **REP. GALLIK** voting aye by proxy.

Motion: **REP. STAHL** moved that SB041512.ATE BE ADOPTED.
EXHIBIT(feh80a06)

(**REP. PARKER** arrives.)

Discussion:

REP. STAHL explained the amendment would remove the PSC's authority in the bill.

Mr. Everts explained Section 6, Page 8, would be eliminated and would eliminated the PSC's rule making authority.

REP. WISEMAN commented that he has received more mail about SB 415 than any other piece of legislation, and it is obvious that people want wind power. **REP. WISEMAN** believed deleting Section 6 would threaten the PSC's ability to deliver what the people want.

REP. HARRY KLOCK, HD 83, HARLOWTON, rebutted that he, too, has received substantial messages from people, but he suspects people have not read the bill in its entirety.

Vote: Motion failed 6-8 by roll call vote with **REP. KLOCK**, **REP. OLSON**, and **REP. STAHL** voting aye and **REP. HIMMELBERGER**, **REP. RICE** and **REP. WAITCHIES** voting aye by proxy, and **REP. GALLIK** voting no by proxy.

Motion: **REP. JACOBSON** moved that SB041514.acb BE ADOPTED.
EXHIBIT(feh80a07)

Discussion:

Mr. Everts highlighted the amendments and explained how they would eliminate the net metering provisions of SB 415. In addition, under the definition of "eligible renewable resources," the amendments eliminate the qualifier that the facility be either located within Montana or delivering electricity on a real-time basis. **Mr. Everts** also pointed out the amendments clarify and broaden the waiver provision.

REP. JACOBSON emphasized the amendments attempt to address and soften some of the concerns of the opponents, while still maintaining the integrity of the bill.

Vote: Motion carried unanimously with **REP. HIMMELBERGER**, **REP. RICE**, **REP. WAITCHIES** and **REP. GALLIK** voting aye by proxy.

Motion: **REP. GROESBECK** moved that SB041507.ATE BE ADOPTED.
[EXHIBIT](#)(feh80a08)

Discussion:

REP. GROESBECK stated he believed this amendment would be beneficial to labor.

Vote: Motion carried 13-1 by voice vote, with **REP. STAHL** voting no, and **REP. HIMMELBERGER**, **REP. RICE**, **REP. WAITCHIES**, and **REP. GALLIK** voting aye by proxy.

Motion: **REP. NOENNIG** moved that SB041519.acb BE ADOPTED.
[EXHIBIT](#)(feh80a09)

Discussion:

REP. NOENNIG explained the amendment would assure the price of wind power will be competitive. **REP. NOENNIG** was concerned that ratepayers could end up paying more.

CHAIRMAN OLSON directed the Committee to information provided by Bob Nelson, Montana Consumer Counsel.
[EXHIBIT](#)(feh80a10)

REP. GROESBECK acknowledged there are differing opinions as to the affect of wind power generation on rates; therefore, **REP. GROESBECK** believed the amendment would preserve the intent of the bill and provide sideboards to protect ratepayers.

Vote: Motion carried 13-1 by roll call vote with **REP. STAHL** voting no, and **REP. HIMMELBERGER**, **REP. GALLIK**, **REP. RICE** and **REP. WAITCHIES** voting aye by proxy.

Motion: **REP. OLSON** moved that HB041501.ajk BE ADOPTED.
[EXHIBIT](#)(feh80a11)

{Tape: 2; Side: A}

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Discussion:

Mr. Everts explained the amendment eliminated competitive electricity supplier from SB 415. **REP. OLSON** listed numerous companies that would be adversely affected by SB 415. **REP. NOENNIG** recalled that proponents of the bill had agreed with this amendment. **REP. GROESBECK** added the amendment would address some of the concerns voiced by his constituents.

Vote: Motion carried 14-0 by voice vote with **REP. HIMMELBERGER**, **REP. RICE**, **REP. WAITCHIES**, and **REP. GALLIK** voting by proxy.

(REP. RICE arrives.)

(Recess taken from 11:00 A.M. until 11:15 A.M.)

Motion: **REP. WISEMAN** moved that SB 415 BE CONCURRED IN AS AMENDED.

Discussion:

REP. JACOBSON expressed his concern about potential price increases. **REP. JACOBSON** stated research indicated that other states with renewable resource portfolios have not incurred price increases. Those states did, however, experience price stability or even a decline in prices.

CHAIRMAN OLSON stated in areas where wind replaced gas generation, prices have gone down. **CHAIRMAN OLSON** believed that what Northwestern Energy (NWE) did with the Judith Gap project was a definite plus, although **CHAIRMAN OLSON** still had questions regarding ancillary services. **CHAIRMAN OLSON** explained the only power wind would displace in the portfolio is base load and not the higher-priced power. While **CHAIRMAN OLSON** depicted the price of power out of Judith Gap as reasonable, he noted adding in the cost of ancillary services would add to the cost. **CHAIRMAN OLSON** recalled the same things were said about deregulation that are being said about wind generation, and the effects of wind generation will not be completely known for some time. **CHAIRMAN OLSON** submitted real-time wind charts, and asked the Committee to note the drastic fluctuations. **CHAIRMAN OLSON** identified wind fluctuation and lack of transmission infrastructure as issues that would need to be dealt with in the future. **CHAIRMAN OLSON** was emphatic about the need to address transmission in Montana. [EXHIBIT \(feh80a12\)](#)

Vote: Motion carried 9-5 by roll call vote with **REP. KLOCK**, **REP. OLSON**, and **REP. RICE** voting no, and **REP. HIMMELBERGER** and **REP.**

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WAITCHIES voting no by proxy, and REP. GALLIK voting aye by proxy. REP. GROESBECK will carry the bill on the floor of the House.

At the request of **REP. WISEMAN** and without objection, written testimony received from Greg Jergeson, Chairman of the Montana Public Service Commission, and written testimony from John Alke, Montana Dakota Utilities, was entered into the record.

[EXHIBIT\(feh80a13\)](#)

[EXHIBIT\(feh80a14\)](#)

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ADJOURNMENT

Adjournment: 11:25 A.M.

REP. ALAN OLSON, Chairman

CYNTHIA PETERSON, Secretary

AO/cp

Additional Exhibits:

EXHIBIT ([feh80aad0.TIF](#))